Ex. P. 7 is an even more mysterious document. It is written partly in Chinese characters and partly in Arabic numerals. No translation of this document was before the Magistrate's Court at the trial as it should have been. A translation of the Chinese part of this document was put before me and it consists of a list of various kinds of vegetables in one column, weights in katties in the next column and what look like sums in cents or dollars and cents in the third column. The only feature about this document which distinguishes it from what any ordinary person would look upon as an account of vegetables purchased is that after every five to seven entries on the left hand column appears what looks like a date "15.9.54", the same date appearing each time. Nevertheless the document on the face of it might well be an account given by one person to several people of vegetables bought on their behalf on the same date. It may well be that an expert in the 100 or 1,000 character lottery would be able to point to features in this document which indicate clearly to him that it is not what it purports to be, but is in fact a record of stakes in a lottery. No such evidence, however, was given in this case, and I can find nothing whatever in the record which would justify any Court in coming to the conclusion that it was a record of stakes — much less that it was a record of stakes relating to a lottery.

I am in complete agreement, with respect, with the remarks of Brown Ag. C.J., in the case of *Sim Ah Song v. Rex*[1] where in discussing so-called expert evidence relating to lotteries he says (at p. 151):—

"The responsibility for the determination of this question, as in the case of every question upon which expert evidence is called rested upon the Court and not upon the expert. The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

In my opinion it was the duty of the Magistrate in this case to look at these documents and decide for himself, of course with the assistance of the expert, whether or not those documents were accounts, memoranda or records of stakes or wages relating to a lottery within the meaning of Section 11 of the Ordinance. He appears to me to have relied entirely upon the bare expression of opinion of the expert and, indeed, not having called for a translation of the document Ex. P. 7 he was never in a position to decide what that document was.

In my opinion upon the evidence it was not possible for the Magistrate and it is not possible for this Court to decide what these documents are. The presumption under Section 11, therefore, did not arise and the prosecution failed to prove its case.

Before parting with this case I feel bound to draw attention to a passage in the evidence of P.W. 1, where he says:—

"On 12.9.54 at 14.30 hours I received information on oath from an informer to the effect that the proprietor of a sundry shop 3359, Bagan Dalam Road, Butterworth was assisting in carrying on a 100 and 1,000 character lottery."

This evidence was clearly inadmissible and prejudicial. It is the duty of prosecuting officers to keep their witnesses in check and they should never allow them to give the substance of their information. The proper evidence for a witness of this kind to give is something like this: — "As a result of information I went at 2.30 p.m. to a sundry shop No. 3359 Bagan Dalam Road, Butterworth." It has, moreover, been repeatedly stated that in criminal cases Judges should not wait for objections to inadmissible evidence to be taken but should intervene to prevent such evidence being given. In my opinion the same principle applies to a Magistrate's Court; and if as may happen evidence of this kind slips out before a witness can be stopped then the Magistrate should make a notice that it is inadmissible and should entirely eradicate the effect of such evidence from his mind.

For these reasons I allowed the appeal and quashed the conviction.

Appeal allowed.

Solicitor for the appellant: *Lim Kheng Kooi.*

TEH KIM CHOOI v. REGINA.

[A. Cr. J. (Spenser-Wilkinson J.) January 26, 1955]

[Penang — Criminal Appeal No. 55 of 1954]

Penal Code s. 199 — Statutory Declarations Ordinance 1949 — Declaration not in form prescribed by Ordinance.

The appellant was convicted in the Magistrate's Court upon a charge of making a false statement in a declaration. On appeal it was submitted that the declaration, the subject matter of the charge, was not in accordance with or in the form prescribed by the Declarations Ordinance 1949, as the words "Declared at .....this.....day of.....before me" were left out.

Held: (1) because of the omission of the words "Declared at, etc." from the declaration in this case the declaration was not a declaration within the meaning of s. 199 of the Penal Code; (2) it is not sufficient for a declarant simply to sign the declaration; he should actually declare it before the Justice of the Peace or Commissioner for Oaths before whom it is to be declared.

Case referred to:—

(1) *Velumailum v. Public Prosecutor* (1947) M.L.J. 153.

MAGISTRATE'S CRIMINAL APPEAL.

R. D. Hume for the appellant.

D. C. Jackson (Senior Federal Counsel) for the respondent.

Spenser Wilkinson J. : —The appellant was convicted in the Magistrate's Court upon a charge that in a declaration made before a Justice of the Peace he made a false statement touching a point material to the object for which the declaration was made contrary to Section 199 of the Penal Code. The main grounds of appeal were that the declaration, the subject matter of the charge, was not in accordance with or in the form prescribed by the Declarations Ordinance, 1949; and that the essential parts of the declaration were not translated to the appellant and he was not asked to declare the same.

With regard to the first point it is quite clear that the important words:—

"Declared at.....this.....day of..... before me."

are absent from the declaration, and it is equally clear that when the appellant was before the Justice of the Peace although he signed the declaration he never declared it.

The result of this is in my opinion that this was not a declaration which any Court was bound or authorised by law to receive as evidence of any fact and was, therefore, not a declaration within the meaning of Section 199 of the Penal Code. In the case of *Velumailum v. Public Prosecutor*[1] Laville J. held that the omission of the words "and by virtue of the Statutory Declarations Enactment" was vital. The omission of the words "Declared at etc.," from the declaration in this case was in my opinion equally fatal. Moreover, I am satisfied that it is not sufficient for a declarant simply to sign the declaration; he should actually declare it before the Justice of the Peace or Commissioner for Oaths before whom it is to be declared.

The learned Deputy Public Prosecutor conceded that in the circumstances of this case he could not resist the appellant's contention that no declaration was made. The result in my opinion is the same as that in *Velumailum's* case that although the statement was wilfully false it is not criminally punishable.

For these reasons I allowed the appeal and quashed the conviction and the accused was acquitted and discharged.

Appeal allowed.

Solicitors for the appellant: *Hogan, Adams & Allan.*

Re LAI AH SEN (m.w.)

[O.C.J. (Spenser Wilkinson J.) February 21, 1955]
[Penang—Bankruptcy No. 17 of 1954]

Bankruptcy — Married woman having separate property at time of contracting debt upon which judgment is based — Whether Receiving and Adjudication Orders can be made where there is a present lack of assets.

This was an application by the Official Assignee that the Receiving and Adjudication Orders made against the bankrupt in this case be rescinded and annulled respectively on the ground that the debtor had no assets of any kind. The Official Assignee relied on the case of Re Manickam Ammal (1).

Held: (1) as the bankrupt in this case had separate property at the time when she contracted the debt upon which the judgment is based, the decision in Re Manickam Ammal (1) did not apply; (2) the fact of present lack of assets was not a sufficient ground for annulment of the Adjudication Order because after-acquired property could pass to the Official Assignee except in so far as it was necessary to be used for the debtor's maintenance.

Case referred to:—

(1) *Re Manickam Ammal (w.)* (1938) M.L.J. 88; (1938) S.S.L.R. 181 distinguished.

BANKRUPTCY APPLICATION.

Balwant Singh (Asst. Official Assignee) for the Official Assignee.

M. Knorpel for the petitioning creditor.

Cur. Adv. Vult.

Spenser Wilkinson J. : —This was an application by the Official Assignee that the Receiving and Adjudicaton Orders made against the bankrupt in this case be rescinded and annulled respectively.

The Assistant Official Assignee based his application on the fact that the statement of affairs shows that the debtor has no assets of any kind and that it is not possible to prove that she has any property and that there is, therefore, nothing to administer. It is suggested that for these reasons the bankruptcy should be annulled. He relied on the case of *Re Manickam Ammal (w.)*[1].

I do not think it necessary to go into the difficult questions involved in that case. In my opinion it is sufficient to point out that the case now before me is clearly distinguishable from that case. In *Manickam Ammal's* case the widow possessed no separate property during coverture and it is clear that the judgment in that case was largely based upon that fact.

In the present case it is clear that the bankrupt did have separate property at the time when she contracted the debt upon which the judgment is based. The decision in the case of *Manickam Ammal,* therefore, does not apply. I do not think the present lack of assets is a sufficient ground for annulment because after-acquired property passes to the Official Assignee except in so far as it is necessary to be used for the debtor's maintenance. I am unable to see any other reason why the bankruptcy should be annulled, and the application is, therefore, dismissed.

Application dismissed.

Solicitors for the petitioning Creditors: *Lim, Lim & Oon.*